# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**O.J.APPEAL No. 50 of 2004**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**

**THE HON'BLE MR.JUSTICE RAVI R.TRIPATHI**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? |
| 2 | To be referred to the Reporter or not ? |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? |
| 5 | Whether it is to be circulated to the civil judge ? |

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**DEVENDRA SOMABHAI NAIK - Petitioner(s)**

**Versus**

**ACCURATE TRANSHEAT PVT. LTD. - Respondent(s)**

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**Appearance :**

MR RAMESH K SHAH for Petitioner No(s).: 1.

DR RAJESH H ACHARYA for Respondent No(s).: 1.

MRPMACHARYA for Respondent No(s).: 1.

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**CORAM :HONOURABLE MR.JUSTICE R.S.GARG**

**THE HON'BLE MR.JUSTICE RAVI R.TRIPATHI**

**Date : 30/06/2005**

**ORAL JUDGMENT** (**Per : HONOURABLE MR.JUSTICE R.S.GARG)**

The present is an appeal under section 72 of the Copy Right Act, 1957 (hereinafter referred to as “the Act”) against the order dated 04.06.2004 passed by the Copy Right Board (at New Delhi) in Case No.1 of 2001.

1. Short facts leading to the present appeal are that the present respondent Messrs Accurate Transheat made an application under section 15(2) of the Act requesting the Board to direct deletion of the Registration at Serial No.A-519109/92. The submission was that the alleged artistic work which in fact was a design for production of a machine having been used for fifty times for manufacturing particular articles in view of subsec.(2) of section 15 of the Act the registration should be brought to an end.
2. The present appellant in response to the notice appeared before the Copy Right Bord and submitted that the item in dispute was not a design and even if it was a design they were not reproducing designs, but in fact on the basis of the knowledge derived from the design they were manufacturing machines and as they did not reproduce the said design and as they were manufacturing typical machines registration under section 15(2) of the Act should not be cancelled. The Board took the view that reproduction of the design would not mean paper reproduction but will have to be given its intelligible meaning and it ultimately held that as the machines on the basis of the said design were admittedly being manufactured more than 170 per year, subsec.(2) of section 15 of the Act shall cease to be effective.
3. Mr. Shah, learned counsel for the appellant submitted that a fair understanding of the law would mean that there should be reproduction of the design and nothing else. He submitted that the Court cannot re-write the law by misinterpreting a particular provision because, to legislate is power of the Parliament and the Courts simply have to decide.

1. According to subsec.(1) copyright shall not subsist under the Act in any design which is registered under the Designs Act, 1911. It is to be noted that the Designs Act has been re-enacted as Act 16 of 2000.
2. Subsec.(2) of section 15 of the Act says that Copyright in any design, which is capable of being registered under the Designs Act, 1911 (2 of 1911 – must be deemed to be substituted by Act 16 of 2000), but which has not been so registered, shall cease as soon as any article, to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the Copyright or, with his licence, by any other person.
3. Indisputably, the design has not been registered under the Designs Act, 1911 (2 of 1911 or 16 of 2000). The question would be whether Copyright shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process.
4. The submission of the learned counsel for the appellant was that the machines are being manufactured on the strength of the design. Therefore, they are not reproducing design and in any case as designs are not being affixed or attached to the machines, there cannot be reproduction of the designs.
5. When this Court asked him that if an article to which the design has been applied has been reproduced more than fifty times then what shall be the legal position, Mr.Shah answered that the Court cannot re-write the law. We are really shocked and surprised with this reply.
6. When the law says that the Copyright shall cease as soon as an article to which the design has been applied has been reproduced more than fifty times, then the logical and intelligible interpretation would be that any article has been produced for more than fifty times applying the said design. Application of the design for manufacturing or creating an article would not mean that the design has been reprinted and has been posted on the body of the machine. The word, 'application' in the present context would mean that the knowledge has been derived from the said design and that knowledge has been applied for manufacturing a particular machine. We cannot have dogmatic approach in the present matter when the law clearly says that the Copyright shall cease as soon as any article to which design has been applied has been reproduced more than fifty times. In the present matter indisputably after applying the design a machine has been manufactured at least 170 times every year. The logical conclusion would be that the Copyright shall cease to have the effect. The Board was absolutely justified in directing deletion/ cancellation of the said registration.

7.The Appeal is dismissed with cost quantified at Rs.3000/- (Rupees three thousand only).

(R.S. Garg, J.)

(Ravi R. Tripathi, J.)

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